

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 70 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RA KAPOOR

Versus

DIRECTOR OF PRINTING & STATIONERY

Appearance:

MR BP TANNA for Petitioner

Miss K.N.Valikarimvala, Asstt.Government Pleader for
respondent No.1

Respondent No.2 refused to accept notice.

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 20/03/96

ORAL JUDGEMENT

The petitioner working in the cadre of Machineman in the Government Photo Litho Press under the Directorate of Printing and Stationery of the State of Gujarat, challenges the appointment of the respondent No.2 to the post of Assistant Printing Foreman from the post of Two Colour Offset Machineman and seeks a direction to treat

the petitioner as senior to the respondent No.2 with consequential future benefits including promotions on the basis of such seniority.

The petitioner was initially recruited as 'Auxiliary' on 25.2.1964, and was thereafter promoted as Litho Printer in the pay-scale of Rs. 95-140 on 1.1.1965, as Hand Press Printer in the pay-scale of Rs. 100 - 145 on 3.10.1968, as Offset Printer in the pay-scale of Rs. 125 - 200 on 22.10.1973 and as Two Colour Offset Machineman on 1.5.1982 in the pay-scale of 350 - 560. According to the petitioner, he should have been treated as senior to respondent No.2 in view of the guidelines for fixation of seniority contained in paragraph 360 of Chapter XII of the Printing and Stationery Manual Volume II. According to the petitioner, as per clauses 4, 5, 6 and 7 of paragraph 360 of the Manual, the seniority in the lower cadre and the educational qualification were required to be taken into account and on that basis, the petitioner ought to have been treated as senior to the respondent No.2. The petitioner was promoted as Litho Printer on 1.1.1965, whereas the respondent No.2 was promoted on 8.1.1965. The petitioner had passed IXth Standard, while the respondent No.2 had passed only IInd Standard. On this basis, the petitioner claims better rights over the respondent No.2. It is contended that the petitioner had made an application dated 17.5.1980 to the respondent No.1 claiming seniority and he was informed that necessary correction would be made in the seniority list.

The learned Counsel appearing for the petitioner submitted that the petitioner had better educational qualifications than the respondent No.2 and on 1.1.1965 the petitioner was already promoted as Litho Printer when the respondent No.2 was only an Auxiliary. It was submitted that, that promotion ought to have reflected in the higher posts for maintaining the petitioner's seniority over the respondent No.2. It was also submitted that in the seniority list as on 1.4.1981 of Machineman, the name of the respondent No.2 was not shown, while the name of the petitioner was shown at serial No.1 and therefore, the petitioner should have been treated as senior to the respondent No.2.

From the material placed on record, it appears that the post of Offset Printer, Hand Press Printer and Litho Printer were rationalised as Machineman. Before that rationalisation of the posts of Machineman, the promotional channel was from Auxiliary (scale 40 - 60) to Litho Printer (scale 95 - 140) and Hand Press Printer

(scale 100 - 145) to Offset Printer (scale 115 - 145). The respondent No.2 was initially appointed as Auxiliary on the same day on which the petitioner was appointed to that post i.e. on 25.2.1964. It is stated in the affidavit-in-reply by the respondent authorities (para 6) that the respondent No.2 stood first in the merit. Thereafter, when the question of filling up the post of Hand Press Printer was considered by the Selection Committee which met on 31.12.1964, the respondent No.2 was found suitable for promotion to that post and accordingly, he came to be promoted on 8.1.1965 as Hand Press Printer in the scale of Rs. 100 - 145. That promotion of the respondent No.2 was never challenged by the petitioner. Therefore, on 8.1.1965 while the respondent No.2 was working as Hand Press Printer, the petitioner was working in the post of Litho Printer, which was a lower post. The petitioner came to be promoted as Hand Press Printer only on 3.10.1968 i.e. more than 2 years after the promotion of the respondent No.2 to that post. The respondent No.2 came to be further promoted as Offset Printer in the revised scale of Rs. 125 - 200 on 6.1.1969 while the petitioner was promoted to that post much later on 22.10.1973. The promotion of the respondent No.2 to the post of Offset Printer on 6.1.1969 was also not challenged by the petitioner. The respondent No.2 was promoted to the higher post of Two Colour Offset Machineman on 1.12.1980 while the petitioner came to be promoted to that post nearly 1 1/2 years thereafter i.e. on 1.5.1982. Thus, the petitioner cannot claim the benefit of clauses 4 to 7 of paragraph 360 of the Manual on which reliance was placed. Clause 4 relates to fixing date of appointment of workers in a cadre on the basis of their inter-se seniority in the immediate lower cadre. Where the immediate previous service was not in the same cadre, then seniority of such workers was to be determined on the basis of their educational and technical qualifications under clause 4 and if such qualifications were same, then on the basis of age under clause 6. Clause 7 deals with inter-se seniority between direct recruits and promotees. The respondent No.2 came to be promoted as Hand Press Printer, Offset Printer and Two Colour Offset Machineman much prior to the promotion of the petitioner to these cadres and therefore, when the respondent No.2 was promoted as Assistant Printing Foreman on 14.12.1982, the petitioner could not have claimed any seniority over him.

In the seniority list published in April, 1981, the name of the respondent No.2 was obviously not shown as Machineman because on that day he was already working

in the cadre of Two Colour Offset Machineman in the higher pay-scale of Rs. 350 - 560. Therefore, from the fact that the name of the respondent No.2 was not shown in that seniority list, it cannot be inferred that the petitioner was treated senior to the respondent No.2 by the Department.

The record clearly shows that the respondent No.2 was senior to the petitioner and he was promoted much earlier than the petitioner to the higher posts in 1965, 1969 and 1980. In respect of his representation, the petitioner was sent a reply on 29.11.1980 under Memorandum No. 4836 informing him that his representation to consider him senior to respondent No.2 was rejected.

Under these circumstances, the petitioner has not made out any case of a better claim over the respondent No.2 for the post of Assistant Printing Foreman on Printing Foreman. The petition is therefore, rejected. Rule is discharged with no order as to costs.
